



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/160988

PRELIMINARY RECITALS

Pursuant to a petition filed September 20, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on October 30, 2014, at Sheboygan, Wisconsin.

The issue for determination is whether the agency correctly (1) reduced the number of personal care hours under the family care program from 10.3 hours to 1.25 hours and (2) reduced the number of supportive home care from 16 hours to 12.25 hours per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Audra Kunding
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.

2. Petitioner is a 79 year old woman who is wheelchair bound. She has a diagnosis of COPD, Asthma, Chronic Pain, Anxiety, Depression and Osteoarthritis.
3. Petitioner is enrolled in and receiving services from Community Care Inc. under the Family Care Program.
4. Petitioner's daughter lives with Petitioner and is paid through the Family Care Program to help Petitioner with some of her activities of daily living (ADLs).
5. In the past the agency has had concerns about Petitioner's living arrangements. Although Petitioner's daughter is paid to clean the home, the agency has observed the home not being kept. Petitioner has expressed concerns about her daughter having access to her bank account, and not paying Petitioner's bills. Both Petitioner and her daughter continue to smoke in the home even though oxygen is used and Petitioner has a diagnosis of COPD. At this time Petitioner reports that she is content with her living arrangements.
6. Petitioner's daughter relies on the money received for taking care of her mother as her only means of support.
7. On August 25, 2014 the agency conducted an assessment of Petitioner's needs. The agency determined that Petitioner needs assistance with washing her hair and feet, putting on socks and shoes and haircuts. Petitioner also needs assistance with basic housekeeping, picking up medication, laundry, changing bed linens, and cleaning the commode and shower bench. The agency based the determination on Petitioner's statements and demonstrations. The agency concluded that Petitioner's needs would be met through 1.25 hours per week of personal care assistance and 12.25 hours a week of supportive home care. This is a reduction as Petitioner was receiving 10.25 personal care hours per week and 16 hours of supportive home care per week.
8. On October 1, 2014 the Division of Hearings and Appeals received Petitioner's request for fair hearing.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The Managed Care Organization (MCO) must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals. In addition, the participant can file a grievance with the MCO over any decision, omission, or action of the MCO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, she may then request a hearing with the Division of Hearings and Appeals. If the person chooses to not grieve a decision or omission and appeals directly, the decision must be reviewed by the Department's MCO monitoring unit. Wis. Stat., §46.287(2)(b). Apparently the monitoring unit upheld the denial in this case.

State FCP policy provides that family members may receive compensation for services or supports that exceed the typical caregiving/support responsibilities. (OFCE Memo 14-01, Exhibit 4). Services that typically assumed to be the responsibility of family members, and thus not covered, are: routine laundry, meal preparation, grocery shopping, housecleaning (particularly if the living space is shared by the caregiver), general companionship, non-medical supervision, assisting with mobility, transportation or escorting a person to occasional medical appointments. *Id.* Services that are typically assumed to exceed the caregiving/support responsibilities of a family member are: toileting, bathing (other than set-up), other personal care the member is unable to complete, frequent laundry due to incontinence/illness, medical transportation, complete transfer assist or other unique services that may be considered for the member-specific situation. *Id.*

In this case the agency concluded that Petitioner needed assistance with washing her hair and feet, putting on socks and shoes and haircuts. In addition, Petitioner needed assistance with basic housekeeping, picking up medication, laundry, changing bed linens, and cleaning the commode and shower bench. The agency allowed a total of 13.5 hours per week for these tasks. At the hearing Petitioner and her daughter testified that this is not enough time. Petitioner's daughter testified that she spends much more than 13.5 hours per week helping her mother. Petitioner's daughter testified that she helps her mother get into the shower, that she sets up her mother's shower bar, that she gives her mother the wash cloth, and washes her mother's back. Petitioner's daughter further testified that she helps her mother whenever her mother changes her clothes as her mother cannot put her hands over her head and cannot pull her pants up. In addition, she stated that she is responsible for all the household chores and meals, and that she sets up her mother's medications. Petitioner's daughter stated that her mother is able to microwave meals, but can't do any meal preparation beyond that. Petitioner and Petitioner's daughter stated that although Petitioner is in a wheelchair, Petitioner is able to transfer herself and freely move around the home.

The agency stated that some of Petitioner's daughter's testimony was different from what Petitioner and Petitioner's daughter during the screen. When the agency was conducting the screen, neither Petitioner nor her daughter, knew the outcome of the screen. In other words, they did not know that reporting that Petitioner can do so many of the tasks of daily living on her own would reduce Petitioner's daughter's hours.

My main question and concern was why was there such a significant reduction when Petitioner's needs did appear to significantly change. The agency response was that Petitioner now lives in an accessible home, and previously she did not. They also said that this was a more in depth screen, and even though she was living in an accessible home when they conducted the last screen, they allowed some additional hours to follow Petitioner longer than they should have. The agency also highlighted that some of what Petitioner's daughter does in helping Petitioner are not covered services.

In this case there is no way to justify more than 13.5 hours per week. Even if I found all of Petitioner and her daughter's testimony credible, I believe that 13.5 hours per week is enough to accomplish the covered tasks for the family care program. Petitioner and her daughter testified that Petitioner needs help bathing, dressing, and household chores. The majority of household chores would not be covered.

CONCLUSIONS OF LAW

The agency correctly (1) reduced the number of personal care hours under the family care program from 10.3 hours to 1.25 hours and (2) reduced the number of supportive home care from 16 hours to 12.25 hours per week.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of November, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 5, 2014.

Community Care Inc.
Office of Family Care Expansion